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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

11 CR 0487 (RJS)

5 JOHN JOHNSON,

6 Defendant.

7 -----x
8 New York, N.Y.
9 January 16, 2013
4:42 p.m.

10 Before:

11 HON. RICHARD J. SULLIVAN

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA
16 United States Attorney for the
17 Southern District of New York
TODD BLANCHE
NOLA HELLER
Assistant United States Attorneys

18 DAVID S. GREENFIELD
19 JAMES NEUMAN
20 Attorneys for Defendant

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(In open court; case called)

MR. BLANCHE: Good afternoon, your Honor.

Todd Blanche for the government. With me at counsel table is AUSA Nola Heller and FBI special agent Rachel Kolvek.

THE COURT: Good afternoon to each of you.

For the defendant.

MR. GREENFIELD: Good afternoon.

David Greenfield for John Johnson. And also seated at counsel table is Jim Neuman, an associate of mine. We're in the same suite of offices.

I would like to propose that Mr. Neuman be assigned by the court for purpose of assisting me during the course of the appellate process in this case. We worked often on other cases before. He's familiar with the facts of this case. He, in fact, has helped me pro bono for the motion practice and is aware of a number of the issues.

So he's on the CJA panel. I've discussed this -- in other cases we've worked together similarly. But particularly in this case, Judge, I've just been assigned two death eligible cases within the last month. Both in stage one of the proceedings. And my time is going to be unfortunately put more toward that than to the appellate process. And for all those reasons, I would ask the court to appoint Jim Neuman as an associate for the purpose of the appeal in this case.

THE COURT: And he would then be compensated at the

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1 CJA rate, the regular CJA rate?

2 MR. GREENFIELD: That's correct, your Honor.

3 THE COURT: Government have any objection to that?

4 MR. BLANCHE: It does not.

5 THE COURT: All right. I will grant that notion
6 motion.

7 So, Mr. Neuman, I will appoint you for purposes of the
8 appellate process. And you should submit bills -- who is --
9 Mr. Neuman will submit them or you'll submit them yourself?

10 MR. GREENFIELD: Mr. Neuman will submit them. I doubt
11 that I'll submit a bill, Judge. I may help him but I'm not
12 going to be submitting a duplicate bill if that's what the
13 Court is asking.

14 THE COURT: So that motion is granted.

15 Let me say good afternoon to each of you and good
16 afternoon to Mr. Johnson as well.

17 And there are friends and family members here as well,
18 Mr. Greenfield?

19 MR. GREENFIELD: Oh, yes. A good number of his family
20 and friends as well.

21 THE COURT: This is a public proceeding so all are
22 welcome here.

23 I want to thank you for taking the time to be here.
24 I'm sure it means a great deal to Mr. Johnson.

25 Some of you wrote letters to the court and I've read

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1 those letters. Thank you for taking the time to do that.

2 Mr. Blanche, you indicated that the victim's mother
3 and perhaps others wish to speak on behalf of the victim?

4 MR. BLANCHE: Ms. Garcia is here and would like to
5 address the court. She's here with other friends and family.
6 And then I have a letter that I've been asked to read into the
7 record at an appropriate time from Mr. Garcia's sister.

8 THE COURT: Welcome to all of you as well. Some I
9 have seen before. Others not. Thank you for being here. The
10 victims have a right to speak in a court proceedings and so,
11 obviously, we'll allow that to take place. And then the letter
12 that Mr. Blanche referred to, I'll certainly allow him to read
13 that into the record as well.

14 We're here for sentencing. Mr. Johnson was convicted
15 at trial on the three counts of the indictment by a jury.
16 Mr. Greenfield, on Mr. Johnson's behalf has filed motions under
17 Rule 29 and Rule 33. Those motions are denied. So sentencing
18 is what remains.

19 I want to go over with the parties what I've reviewed
20 in connection with sentencing, and then if there's anything
21 that I've over looked, by all means, let me know.

22 I was the presiding judge at trial so I'm familiar
23 with what took place at the trial. I've reviewed the
24 transcript in parts.

25 I've also reviewed the presentence report prepared by

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1 the probation department. It's dated November 29. It is a
2 19-page, single-spaced report. It also includes a
3 recommendation by the probation officer.

4 I have reviewed Mr. Greenfield's sentencing memorandum
5 which is a six-page, double-spaced memorandum. In addition, it
6 includes attachment, a letter from Mr. Johnson's grandmother
7 who raised him, some of the time raised him. And just
8 yesterday I received a letter from Jenecca Williams, who is
9 Mr. Johnson's cousin. I've reviewed that letter as well.

10 Then I have reviewed the government's sentencing
11 memorandum which is a twelve-page, double-spaced submission
12 dated January 10.

13 And I think that's really it in connection with
14 sentencing.

15 So is there anything else that should be part of the
16 record that I've not referenced?

17 MR. BLANCHE: Not from the government.

18 THE COURT: Mr. Greenfield?

19 MR. GREENFIELD: I'm not aware of anything.

20 THE COURT: Well then let's start with the presentence
21 report.

22 Mr. Greenfield, you've received a copy of the
23 presentence report?

24 MR. GREENFIELD: Indeed I have, your Honor. I've
25 reviewed it on a number of occasions with my client. We have

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1 no objections at this time to whatever is in the report.

2 THE COURT: To what's in the report. Obviously, you
3 dispute the jury's verdict and you've made it clear you intend
4 to appeal, as is your right. But with respect to the findings
5 I've set forth and the guidelines calculation set forth in the
6 presentence report, you have no objection?

7 MR. GREENFIELD: That's correct.

8 THE COURT: Mr. Blanche, you have reviewed the
9 presentence report as well?

10 MR. BLANCHE: Yes, your Honor.

11 THE COURT: You and Ms. Heller.

12 And do you have any objection to anything in it?

13 MR. BLANCHE: No, your Honor.

14 THE COURT: All right. Well Mr. Johnson let's start
15 with the presentence report. And one of the things that we'll
16 focus on for a few minutes is the sentencing guidelines
17 application in this case. I'm sure Mr. Greenfield has
18 explained to you the sentencing guidelines.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: To some extent. Right.

21 And others here may be less familiar with the
22 sentencing guidelines. So let me tell you what they are and
23 how they work.

24 The sentencing guidelines are a big book that is put
25 out by a commission. The commission is called the United

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1 States Sentencing Commission. And it's made up of judges and
2 experts in the field, lawyers primarily. They are tasked with
3 putting out this book each year. And certain changes are made
4 on a yearly basis.

5 But the way it works is as follows. Every crime or
6 type of crime is covered by a chapter or a subchapter in this
7 book. And a judge is directed then to go to the book, go to
8 the appropriate chapter, and make certain factual findings and,
9 on the basis of those findings, points are assigned. So the
10 court goes through the process of adding and subtracting
11 points. And then at the end of that comes up with a number.
12 That number is referred to as the offense level.

13 There then is a separate calculation done under a
14 different chapter in the book that's referred to as the
15 criminal history category. Not surprisingly, a person who has
16 previously been convicted of crime, a person who has previously
17 gone to jail for other crimes is treated more harshly than a
18 person who has no prior convictions. Again, the judge goes to
19 that chapter, makes findings about whether there were prior
20 convictions; if so, when they were, for how long, whether the
21 defendant committed this crime while on supervision for that --
22 for those other crimes. In any event, it's a mathematical
23 process. The court adds and subtracts and comes up with
24 another number.

25 There are six criminal history categories. One is the

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1 lowest, the least serious. Six is the highest and the most
2 serious. So the court selects which is the appropriate
3 criminal history category, one through six.

4 And then on the basis of those two findings, the
5 offense level on the one hand and the criminal history category
6 on the other, the court is directed to make a finding as to
7 what is the appropriate range of sentence according to this
8 book.

9 And if you go to the back of the book, there's a
10 table. And it's very straightforward. One axis, one part of
11 the book, the table in the book relates to the offense level
12 and the other axis going across reflects the criminal history
13 category. And the spot on the chart where those two meet is
14 the range that, according to the commission that prepares this
15 book, would be appropriate under the circumstances.

16 Now, judges are not required to follow this manual.
17 We don't have to slavishly adhere to it. But judges are
18 required to consider this manual and to make findings and to
19 decide what the range is.

20 After that, a judge is required to consider a variety
21 of other factors. And I might as well say what those are now,
22 but we'll be talking about them, I'm sure, at some length.

23 Those other factors include the defendant's personal
24 history. Mr. Johnson's a complicated person, like everyone is,
25 and so he has an entire life that has to be considered by the

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1 court. So I will look to the circumstances of his birth and
2 childhood, his upbringing, his educational background, his work
3 history, his criminal history, his family relationships today
4 and throughout his life, all the things that make him who he
5 is; good, bad. Everybody is complicated. So the court is
6 required to consider the whole person.

7 In addition, the court is required to consider the
8 facts and circumstances of this crime or these crimes. This is
9 a very serious crime. Resulted in the death of another human
10 being. So that's about as serious as a crime can get.

11 But it's not just what the label of the crime is.
12 It's the details of the crime. What Mr. Johnson did. What the
13 jury found that he did. What I will find that he did. And
14 what others did relative to him. And the Court is required to
15 really focus on the particular details of the crime.

16 The goal is to fashion a sentence that reflects the
17 seriousness of the crime and that promotes respect for the law
18 and that provides a just punishment for the crime.

19 So that's very, very important. The court looks to
20 the circumstances of the crime that's involved.

21 In addition, the court has to consider the need to
22 deter or discourage the defendant, Mr. Johnson, and others from
23 committing crimes in the future. And if you think of it this
24 way, one of the objectives of the sentencing is to send a
25 message to the individual defendant but also to a wider public

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1 so that people understand that these types of crimes just won't
2 be tolerated. And, hopefully, Mr. Johnson and others will see
3 that there is such a cost to this conduct that they will never
4 commit crimes like this again. And that other people will not
5 commit them in the first place. And the hope is that there
6 will be fewer crimes like this because of the sentence imposed
7 in this case. It would have a deterrent effect or a
8 discouraging effect.

9 Now it's sometimes hard to know what the effect of a
10 sentence will be and how broadly it will be felt. But Congress
11 has found -- and I think most of us understand intuitively that
12 there's something to that, that there is a message that gets
13 sent by a sentence and that that's a legitimate objective of
14 sentencing. So I'll factor that in as well.

15 Other factors that I have to consider are
16 Mr. Johnson's own needs while he's in custody. So to the
17 extent he has medical needs or mental health needs or substance
18 abuse treatment needs, the need for educational opportunities,
19 vocational training, all of those things are properly
20 considered by the court in fashioning an appropriate sentence
21 so that when he's released, if, in fact, he's -- doesn't
22 receive a life sentence, that he would have skills and the
23 ability to live productively when he gets out. So that's
24 another factor I have to consider.

25 Another factor I have to consider is the need to avoid

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1 disparity between the sentence imposed in this case and the
2 sentence imposed on other people in this case or in other cases
3 that are similarly situated.

4 The point is it would be unfair if a person does much
5 more time or much less time than other people who did basically
6 the same thing simply because of who the judge was or because
7 of who the lawyers were. The goal is to have rough equality so
8 that the people who have done the same thing with similar
9 criminal histories are treated roughly the same.

10 If that were not the case, if it was arbitrary or if a
11 certain judge were -- judges were real really, really tough,
12 others very, very lenient and it all just turned on who the
13 judge happened to be, people would lose respect for that
14 system. They would wonder whether this was fair system. So
15 courts are required to take into account what others have
16 received or would receive in similar circumstances. So, the
17 hard part for me is to balance all of those things.

18 The guidelines are one factor. And we're going to
19 talk about the guidelines in a moment. But the other factors
20 are also important, and we'll talk about those. Mr. Greenfield
21 has talked about those in his submission. The government has
22 as well.

23 So we'll start, Mr. Greenfield, with the presentence
24 report and the guidelines. And I don't think there's any
25 dispute about what the guidelines are in this case.

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1 In this case, because of the nature of the crime, the
2 fact that another person was killed, the base offense level is
3 level 43. That's the highest level under the guidelines.
4 That's pursuant to section 2A1.1.

5 The criminal history category that applies here turns
6 on the fact that Mr. Johnson has prior convictions from 2007
7 and 2008, both for criminal possession of a controlled
8 substance in the Bronx, each of which resulted in 30 days
9 imprisonment. There is also another 2008 -- there's a 2009
10 conviction for conduct that was in 2008, also in the Bronx,
11 related to the criminal sale of a controlled substance. That
12 resulted in a one-year sentence. And then there was a criminal
13 trespassing charge that Mr. Johnson pled guilty to in 2009.
14 That resulted in three days of custody.

15 According to the presentence report -- and I think
16 there is no objection, that is five criminal history points.

17 Now, was Mr. Johnson on supervised release or parole
18 at the time the instant offense was committed?

19 MR. BLANCHE: No, your Honor, I don't believe he was.
20 But I believe Mr. -- we should have brought this up earlier,
21 but Mr. Greenfield indicated that the conviction in paragraph
22 42 for criminal trespassing should, under the guidelines, not
23 result in any criminal history points. I believe that was in
24 Mr. Greenfield's submission. And the government doesn't
25 dispute that. So I believe that Mr. Johnson has five criminal

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1 history points -- I'm sorry, four criminal history points.

2 THE COURT: Okay. So four criminal history points or
3 five criminal history points puts him in criminal history
4 category III. So it doesn't really make a difference for
5 purposes of the guideline calculation.

6 MR. BLANCHE: Agreed.

7 THE COURT: But the parties agree that paragraph 42
8 should be amended to indicate no criminal history points?

9 MR. BLANCHE: Yes, your Honor.

10 MR. GREENFIELD: Yes, your Honor.

11 THE COURT: But the question I had so at the time of
12 the robbery and the shooting, Mr. Johnson was not under any
13 kind of supervision from the state court system?

14 MR. GREENFIELD: That's my understanding.

15 MR. BLANCHE: Correct, your Honor.

16 THE COURT: All right. Based then on a criminal
17 history category of III and offense level of 43, the sentence
18 recommended or directed under the guidelines is a life
19 sentence. So, that's the guidelines. There are other factors,
20 of course, that I have to consider.

21 So Mr. Greenfield, I'm happy to hear from you.

22 MR. GREENFIELD: Do I go before the victim impact
23 statement or after?

24 THE COURT: I don't think there's any required way to
25 do it.

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1 Does anybody have a preference?

2 Mr. Blanche.

3 MR. GREENFIELD: The only time -- Judge, the only time
4 I've been involved with that, it preceded my presentation, so I
5 can possibly comment on it.

6 THE COURT: I will give you an opportunity to comment
7 regardless. But that's fine, if Mr. Garcia's mother would like
8 to address the court now.

9 MR. BLANCHE: Address the court now?

10 THE COURT: Yes.

11 MR. BLANCHE: Does your Honor want her to speak at the
12 lecturn?

13 THE COURT: At the lecturn would be great if you could
14 keep your voice up and state your name and spell your name for
15 the record.

16 MS. GARCIA: My name is Evlyn Garcia.

17 THE COURT: All right. Ms. Garcia, good to see you.
18 I saw you previously and you testified at trial. So thank you
19 for being here today.

20 MS. GARCIA: Thank you for having me.

21 I was supposed to write something. I started to
22 several times. I just couldn't because what really could I say
23 to what he did to my son. I don't know. I said maybe when I
24 saw him I would know what to say.

25 What I did want to say was what kind of kid my son

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1 was. My son was a very good boy. He was only 16. He was very
2 loved by all his family. He might have started hanging out
3 with his friends and been at the wrong place waiting for
4 whatever he was doing there. But despite all of that, my son
5 didn't have a weapon. My son didn't charge at the defendant.
6 My son didn't -- he was actually on the floor picking up
7 quarters from playing, from shooting quarters with his friend.
8 He was on the ground and he went and shot my son despite that
9 he -- you know, my son couldn't defend himself. And how does a
10 person shoot a 16-year-old young boy?

11 I have a hole in my heart. It will never be covered.
12 My daughter, she's been a mess. She's going to school. Thank
13 God she's graduating soon. I have two boys over there who are
14 raised -- who are being raised without their brother. They
15 were eight and ten when he died. I have a whole entire family
16 who misses my son. He was very charismatic. He was the joker
17 of the family.

18 And you know what he did here, he destroyed two
19 families here because I'm pretty sure he destroyed his family
20 who are not going to have him around. And he destroyed my
21 family who I'm never going to see my baby ever again. My son
22 would have been 21 right now, maybe in college. And that's
23 just not going to happen. And I'm never going to see him
24 again. And it's not fair because that was my baby. He was my
25 firstborn son. He was even born in a special way. I had him

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1 at home. I didn't even get to get to the hospital.

2 He was just very special. He would do so many things
3 for me. I had seven stomach surgeries and my son took care of
4 me every single time. He would help me bathe. He would help
5 me dress. He was always there for me. He defended me to the
6 end. Anybody who would say anything about me, he always
7 defended me. He was my right-hand. He was my little buddy
8 because at the time my other two boys, they were very young.
9 He was 16. He was -- my daughter was away in college. He was
10 the one who would spend the nights up with me watching TV. He
11 used to make chocolate covered strawberries for me. I will
12 never have that again.

13 I just wanted to know why. Why would he shoot my son?
14 If he is allowed to even answer that. I've waited five years,
15 one month, and fifteen days to understand and know why my son
16 is dead. Because I don't understand it.

17 My son was picking up quarters from the ground. He
18 didn't -- I don't understand -- I don't understand. I don't
19 know why he would shoot my son, and I would really, if he is
20 allowed to speak.

21 THE COURT: Mr. Johnson will have the right to speak
22 if he wants to but he's not required to, and no one can make
23 him answer that question, if there is an answer to that
24 question, I don't know. But it's a question that everyone is
25 wondering and the reality may be there is no answer to that

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1 question. But that doesn't make it any easier. I agree.

2 MS. GARCIA: In conclusion, I just want to say that
3 you know what he did, a lot of kids are doing this. It's not
4 fair. Destroys families. Destroys people.

5 My family has never been the same. I have an uncle,
6 the one who raised me, who was like my father, who raised my
7 son as well. That was the love of his life. And my uncle died
8 very soon after him of sadness. He couldn't take the pain, the
9 loss of my son. I became an alcoholic. I was in and out of
10 rehabs for two years. I gave my kids away to my mother for two
11 years because I became a hateful person. I didn't care about
12 no one.

13 Thank God I got my life together, and I got my
14 children back, and I moved, and I even went back to school
15 trying to be a better person.

16 But I still -- my life is never going to be complete
17 because I don't have my son with me. And I just want you to
18 know that you destroyed my life by that action that you did.
19 And that's all I have to say.

20 THE COURT: All right. Thank you, Mrs. Garcia. I
21 appreciate it.

22 MS. GARCIA: Thank you for listening.

23 THE COURT: Mr. Greenfield.

24 MR. GREENFIELD: I thought a letter was going to be
25 read.

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1 THE COURT: Let's do that then as well.

2 MR. BLANCHE: This is a letter from Maria Garcia which
3 is the victim's older sister, your Honor.

4 My brother. Although he was two years younger than me
5 was like my twin. Because we looked identical. He was a
6 jokester. Sweet and funny. I found out I was pregnant with my
7 daughter the same week you killed my brother. And I never got
8 to tell him that. Luckily, my mother told him behind my back.
9 And, thank God, my daughter came out looking and acting just
10 like him. How dare you think that you could have gotten away
11 with this. I hope you live a miserable life knowing that you
12 not only took an innocent kid's life but that you've hurt so
13 many people as well. Tinkey's family and friends miss him so
14 much. We've waited four-and-a-half long years and I'm glad
15 justice has finally been served.

16 THE COURT: Okay. Thank you.

17 MR. GREENFIELD: May I proceed?

18 THE COURT: Yes.

19 MR. GREENFIELD: I don't know how long we've known
20 each other, Judge, but I -- it's been a while. But I've been
21 doing this for 46 years now, and I have to say this is probably
22 the most difficult sentencing that I have ever been involved in
23 for a number of reasons. And I mean to hear a mother's grief
24 like I just heard and to hear a sister's grief like I just
25 heard, it's hard to follow. But the fact that a life was lost

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1 is clearly a tragedy.

2 But in fashioning a sentence and arguing for my client
3 here today, Judge, I want to do the best I can for him to
4 assure that a near tragedy doesn't occur with respect to him.
5 There are, as the court heard during the course of trial, there
6 are some significant issues as to whether or not he truly was
7 the individual who was a young black man who shot Bernardo
8 Garcia. There's significant issues about that that will be
9 dealt with on appeal. I'm not going to retry the case now,
10 Judge, I don't intend to. Try to avoid retrying the case now.
11 But there were significant hard issues as to whether or not he
12 was the young black man in the hallway that day who pulled the
13 trigger that killed Bernardo Garcia.

14 I understand the PSR is calling for a life sentence.
15 I understand the government is asking for it. But I
16 respectfully suggest to your Honor that under the facts of the
17 case, as to the involvement of the young black man -- young
18 black kid, I think it was actually, that was referred to in the
19 FBI reports initially describing the shooter, there's a
20 significant issue as to whether or not he is that individual.

21 THE COURT: Look, Mr. Greenfield. I know those
22 arguments -- those are best left for the appeal, obviously.
23 But the jury found him guilty. And so I'm going to sentence
24 him based on that finding. I don't think it was irrational for
25 the jury to reach that conclusion.

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1 So, you argued in your letter, or you suggested that
2 there's sort of -- tenuous nature of the evidence implicating
3 Mr. Johnson is sort of -- should be a relevant factor as to
4 what is the appropriate sentence.

5 Is that right? Do I have that right?

6 MR. GREENFIELD: It was overstated, Judge. I
7 understand. He was convicted by a jury. He must stand
8 sentenced now. The individual who committed the crime,
9 whether -- let me withdraw that last statement.

10 He must be sentenced now because the jury found him
11 guilty. Understood.

12 Looking at the facts of the case as I heard them
13 during the course of the trial, and taking into consideration
14 the factors under 3553(a) that the Court must consider in
15 meting out sentence in this case, I think a sentence of a
16 nonlife sentence is called for in this case. And if the court
17 will allow.

18 THE COURT: I definitely want to hear you. I will
19 allow it anyway, but you have a right to make those arguments
20 so by all means go ahead.

21 MR. GREENFIELD: What you have here is a robbery that
22 was hastily planned by the government witness Donnell
23 Richardson. He brought in his two friends, according to
24 Donnell Richardson, Mr. Reed and Mr. Gonzalez, to help in the
25 course of a robbery.

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1 According to Donnell Richardson there was no violence
2 that was intended to occur during the course of that robbery.
3 But it was merely just to scare the individuals in the hallway
4 so Richardson could take over the drug operation in which
5 Mr. Garcia and another individual were involved.

6 Apparently at the last second Reed recruits somebody
7 described by Mr. Richardson, initially described by
8 Mr. Richardson as a young black kid. And that person was
9 brought in as a second gun during the course of the robbery.

10 Reed enters the hallway where the drug operation is
11 located. And he enters firing his weapon apparently.
12 Apparently the gun goes off in the hand of the second
13 individual, the young black kid, and Mr. Garcia is shot and
14 unfortunately passes away.

15 The only witness to the murder is Garcia's -- actually
16 in the hallway is Garcia's compatriot who is working. That
17 compatriot doesn't give a description about the shooter at all.
18 He just says he believed he's black. Couldn't even give a full
19 clothing description much less a description of the individual.

20 But clearly, according to both Richardson and the
21 individual in the hallway, the young black kid was not the
22 planner of the robbery, was not the leader of the crew, was
23 brought in at the last second. And apparently, according to
24 the government's proof here, the gun might have gone off
25 accidentally or unintentionally. That's how I heard the proof

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1 during the course of the trial. That's how I heard it coming
2 in. The gun was discharged during the course of the robbery.

3 THE COURT: No question about that.

4 MR. GREENFIELD: Sorry, Judge?

5 THE COURT: No question about that. The gun was
6 discharged during the course of the robbery.

7 MR. GREENFIELD: And sadly, Bernardo Garcia was hit by
8 that discharged weapon.

9 THE COURT: Yes.

10 MR. GREENFIELD: It seemed clear to me -- and maybe
11 the court sees it differently -- but there was no intent for
12 anybody to get shot during the course of that robbery. There
13 was no intent for anybody to be killed during the course of
14 that robbery.

15 THE COURT: Well I mean it's distinguishable from a
16 premeditated murder situation where someone is planning for
17 days, hours, weeks, to actually kill another person.

18 But it's a felony murder, a robbery with guns that led
19 to the death of another individual.

20 MR. GREENFIELD: The government could have chosen to
21 charge the count any way they wanted to, the murder count.
22 They chose to charge it as a 924(j), which gives the Court the
23 greatest discretion in sentencing of any count charging murder.
24 The sentence can go anywhere from probation all the way up to
25 life on a 924(j).

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1 But clearly the government chose that count because I
2 would assume they weren't sure whether it was an intentional
3 shooting or not, if it was meant to be an intentional shooting.
4 Clearly their witnesses don't indicate that it was intended to
5 occur. But clearly a shooting took place during the course of
6 a robbery and a death followed. Under the state law system
7 that's a felony murder.

8 THE COURT: Right.

9 MR. GREENFIELD: I'm not arguing the fact that it's
10 not a murder, Judge. I'm arguing the fact that whoever that
11 young black kid was, and if indeed it was John Johnson, didn't
12 enter there with the thought of committing a murder. Something
13 went wrong and a death occurred.

14 Now the Court, because of that, has to mete out,
15 fashion a sentence. And I don't envy you the job in this case,
16 Judge. I don't.

17 THE COURT: It doesn't pay much either but it is what
18 it is.

19 So, look, I yesterday imposed a life sentence on
20 Mr. Reed. There are differences between Mr. Reed and
21 Mr. Johnson. Differences in terms of age. Differences in
22 terms of criminal history. Differences in terms of I think
23 responsibility for planning the robbery. But also differences
24 in terms of who pulled the trigger that killed Mr. Garcia.

25 MR. GREENFIELD: Clearly.

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1 THE COURT: So I think at some point it's worth
2 addressing those differences. I don't want to take you out of
3 the order you were pursuing.

4 MR. GREENFIELD: Actually, I was at the point where I
5 was going to go through the 3553(a) factors.

6 Start with, before we even get to that, if, in fact,
7 he was the individual -- and all my comments about the crime
8 itself is he denied it. So I don't want it to have anybody say
9 that I am acknowledging his involvement because he certainly
10 never did that to me.

11 Certainly the crime was the brainchild of the
12 government's witness, Donnell Richardson, a career criminal who
13 has had many opportunities to go straight and narrow in the
14 past and always went far and wide instead.

15 He recruited somebody who he says was a past partner
16 in crime, Mr. Reed, and apparently a past partner in crime in
17 Mr. Gonzalez also. But they're the ones who talked about this
18 robbery. They're the ones who planned the robbery. And the
19 young black individual who was the second gun was not a party
20 to that at all. He certainly did not think to -- he didn't
21 even know that there was drugs being sold in that hallway,
22 whoever that young black was, prior to the time he went into
23 the hallway.

24 Clearly it was a crime of Richardson. Clearly it was
25 being carried out by Reed. And if my client was there, other

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1 than the fact that he's apparently the person who pulled the
2 trigger, he was not a leader, a manager, or in any way somebody
3 who put this deal together, this unfortunate, terrible incident
4 that happened.

5 His life, to begin with, was a shambles. His mother
6 basically abandoned him almost at birth. He grew up in a
7 foster home system. His maternal grandmother who is -- excuse
8 me paternal grandmother who is now living in the Carolinas --
9 North Carolina, I believe it is, can't be here today, raised
10 him almost from the toddler stage until he was a teenager. And
11 she raised him to be, according to her letter, a fine,
12 respectable man.

13 His father, who he has maintained a good relationship
14 with, over the years had another home where he had other
15 children. But he always was there for his son. He was here
16 everyday during the course of trial. He's here today in the
17 audience. And he's with his son day in and day out, at least
18 in spirit.

19 His aunt is also here, lived with his grandmother and
20 helped raise him too.

21 He worked in his father's business, which is a paper
22 goods business, for many years, while he was attending school
23 and while he was out of school, actually. He worked for his
24 father for a good three or four years as far as I know.

25 At the time of his arrest he was working for a caterer

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1 located in Central Park, one of the pavilions in Central Park,
2 and had worked there for over a year on a steady basis.

3 He has no violence in his background whatsoever. If
4 anything, he enjoyed smoking marijuana a little bit too much
5 and that got him involved in street level drug distribution.

6 He has a son who I believe is six years old -- six
7 years old now who he helped raise, who is being raised by his
8 grandmother now down in North Carolina. His son lived with him
9 until his arrest in this case and with his grandmother. His
10 grandmother, as I said, moved down to North Carolina almost
11 after the -- a few days after the trial ended.

12 A picture emerges of him, I think, of somebody who
13 came up in tough circumstances and did as much as he could
14 under the circumstances growing up where he grew up to try to
15 make a life for himself. His grandmother's letter shows what a
16 decent -- what she considers him to be, a decent
17 self-respecting -- a decent respectful person.

18 His cousin, Jenecca Williams, wrote a, I thought, very
19 touching letter which I sent to the court yesterday, speaks of
20 him in glowing terms, saying how devastated she is by the
21 circumstances here.

22 Mrs. Garcia had it right. Two families are crushed
23 here. The loss of her son, he'll never be replaced. My
24 concern -- my concern for him is he's 24-years-old. His record
25 other than drug sale is minimal. He has a good relationship

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1 with his family. He worked when he could. He's got a son who
2 loves him. And I don't believe a life sentence is called for
3 here, Judge.

4 He is not the type of person that you sentenced
5 yesterday. And he's not the kind of guy you see very often in
6 here charged with violent crimes. I think, given a sentence of
7 20 years, the interests of justice would be well served. And I
8 believe, based on the guy I've gotten to know over the course
9 of this case -- and I've gotten to know him, spent a lot of
10 time with him and respectful is the right word when you
11 describe him. He is a -- just a -- I won't say -- he's a good
12 person to sit with and talk. I mean it's -- sometimes I don't
13 want to go to the MCC or MDC to see who I have to see. I've
14 never felt that way about seeing my client. It was always a
15 good time being spent both in going forward with the case and
16 also talking to somebody who I knew was listening to what I was
17 saying and was taking what I was saying to heart when we spoke.

18 Judge, I can only -- and I respectfully suggest to
19 your Honor that a life sentence is not called for. I
20 respectfully suggest, your Honor, to your Honor that 20 years
21 will serve the interests of justice and yet after that 20 years
22 I don't think the criminal justice system will ever see John
23 Johnson again. I think when he comes out he will go ahead and
24 lead a law-abiding life. And I would ask the court to impose a
25 sentence of 20 years. Thank you, Judge.

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1 THE COURT: Thank you, Mr. Greenfield.

2 Mr. Blanche.

3 MR. BLANCHE: Thank you, your Honor.

4 Your Honor, in the government's view one of the most
5 telling things about the presentation from Mr. Johnson is an
6 incredible lack of acceptance of responsibility. And what I
7 mean by that is not once during the argument that your Honor --
8 that the Court just heard did Mr. Greenfield refer to
9 Mr. Johnson as the shooter. What he did was he referred to
10 Mr. Johnson's view that was put forward at trial which is that
11 there was a young black kid who killed Bernardo Garcia.

12 Your Honor, that's not what happened. I mean the
13 person that murdered and killed Bernardo Garcia is Mr. Johnson,
14 John Johnson.

15 THE COURT: I'm going to sentence him based on that.
16 Are you suggesting I should sentence him to more basically
17 because he hasn't given up his right to appeal by not admitting
18 that?

19 MR. BLANCHE: Absolutely not. I'm not suggesting that
20 Mr. Johnson has to accept responsibility or owes Ms. Garcia an
21 explanation as to why he murdered her son. But on the other
22 hand, when Mr. Johnson stands in front of your Honor and asks
23 for mercy, and asks for a nonguidelines sentence, and says you
24 shouldn't impose a sentence that the guidelines call for, I'm
25 different than Mr. Reed, the Court has too ask, in the

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1 government's view: Why? How are you different? How do I know
2 that if I impose a sentence less than life you're going to lead
3 a law-abiding life? Or you're going to show that you've earned
4 something less than a life sentence?

5 There are a couple -- well there's several ways that
6 the Court could perhaps -- what the Court could look to to find
7 that. One is any showing of remorse.

8 And he doesn't have to show remorse, your Honor. He
9 doesn't have to accept responsibility. But it's telling that
10 he, on the one hand, refuses to accept any remorse, any
11 responsibility, any explanation for this crime. But on the
12 other hand says that he will not have further contact with the
13 justice system. He will lead a law-abiding life if he's
14 sentenced to something less than life. And I do -- the
15 government does believe that that's a factor that the Court
16 should consider.

17 Mr. Greenfield spent the first significant portion of
18 his arguments to your Honor talking, again, about Mr. Johnson's
19 innocence. Mr. Johnson is not innocent. The Court is not
20 sentencing an innocent man. The Court is sentencing a
21 murderer.

22 Just following up on that, your Honor. Mr. Greenfield
23 suggested that perhaps this was an accident. Or perhaps the
24 gun went off. And it is true. There was no witness that
25 testified about the exact moment when Mr. Johnson murdered

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1 Bernardo Garcia. But what we do know is that Gregory Reed and
2 John Johnson burst into the lobby of that building. Gregory
3 Reed immediately pulled out his gun and fired it as a warning
4 shot while Luis Navarro ran off. Virtually immediately
5 thereafter a bullet went right through the chest of Bernardo
6 Garcia. So we can certainly draw inferences as to what
7 happened even though nobody was there. And the only reasonable
8 inference is that John Johnson, who had a gun, and was given a
9 gun shortly before the robbery, pulled his gun out and shot it
10 at Bernardo Garcia.

11 There is no testimony about a struggle. Ms. Garcia is
12 right. There is no testimony that Mr. Garcia lunged towards
13 John Johnson and in a defensive maneuver John Johnson killed
14 him. To the contrary. The testimony is what Ms. Garcia said,
15 which is that Luis Navarro testified that Bernardo Garcia, they
16 were playing quarters, and he was leaning over, and that's
17 consistent with the crime scene evidence. And that's when he
18 was murdered.

19 So this is not a preplanned murder but an intentional
20 murder in the sense that John Johnson pulled his gun and killed
21 Bernardo Garcia in cold blood.

22 And also, your Honor, the government's choosing to
23 charge this as a 924(j) with no mandatory minimum has
24 absolutely nothing to do with the government's belief or view
25 of Mr. Johnson's guilt. There is no other available federal

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1 murder charge for this conduct; 848(e), 21 United States Code
2 848(e) requires a murder during a (b)(1)(A) or a large scale
3 drug trafficking crime. We didn't have evidence of that.

4 So the fact that this is a 924(j) crime with no
5 mandatory minimum is because that is the only available murder
6 charge in the federal system for the government. So that's
7 absolutely not true.

8 As far as Mr. Johnson's background, the government
9 agrees with, I'm sure, with what the Court mentioned and also
10 what Mr. Greenfield said. He is nowhere as bad a background as
11 Mr. Reed.

12 THE COURT: Bad a background meaning criminal history?

13 MR. BLANCHE: Criminal history. Correct, your Honor.
14 You're comparing apples to oranges. It appears that
15 Mr. Johnson was a drug dealer and that he got caught dealing
16 drugs both before and after he murdered Bernardo Garcia. So
17 that is a factor that, in theory, would weigh in favor of a
18 lower sentence.

19 However, on the other side of that is he's a lot
20 different than Gregory Reed. Because the instant offense,
21 Gregory Reed made a choice when he pulled his gun out and shot
22 it. He, from all the testimony, shot a warning shot. Fired in
23 the air. And as society should, society should treat that
24 conduct different than what John Johnson did, which is pull out
25 a gun and murder Bernardo Garcia.

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1 So there's a difference between a person who fires a
2 warning shot, or fires a shot in the air, versus somebody who
3 fires right at somebody and kills him. So as it relates to the
4 instant offense, in the government's view, and what happened
5 inside the lobby, John Johnson was worse than Gregory Reed.

6 He wasn't the planner. He was a late recruit in that
7 he was brought on after Mr. Reed and Mr. Gonzalez were
8 recruited by Mr. Richardson.

9 But he didn't just walk in and commit the robbery. He
10 was part of the plan. He met shortly before the robbery, about
11 a mile away, at Hunts Point, where they talked about what they
12 needed to do. He was given a gun by Gregory Reed up the block
13 from the building. And he was one of the guys that went in.

14 So he is different than Gregory Reed in his
15 background. He most certainly is. But what you also have,
16 similar to Gregory Reed, is after this happened, after he
17 committed a murder, he didn't change his life. And it appears
18 that he had opportunity to do so. It appears that he has many
19 members of his family who have jobs. His father was providing
20 him a place to work. And he didn't. Indeed, he was arrested
21 for drug dealing after the instant offense, your Honor.

22 THE COURT: But he was working as well.

23 MR. BLANCHE: Pardon me, your Honor?

24 THE COURT: Doesn't the presentence report indicate
25 that he was also working at that same period of time?

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1 MR. BLANCHE: Yes, your Honor. According to what
2 Mr. Johnson told the probation officer. And the government
3 doesn't have any information either way. He was working at
4 that time as well, while he was also selling drugs, your Honor.

5 So I don't think the Court can be comforted by what
6 Mr. Johnson did after he committed this murder. This wasn't a
7 wake-up call for him, where he's moved away and stopped
8 committing crimes. The only evidence that we -- well, the
9 evidence that we have is that he continued to deal drugs and
10 indeed was arrested for dealing drugs after the instant
11 offense.

12 So those are sad facts. And it's not something the
13 government stands in front of the court happy. It's awful.
14 It's horrible that Mr. Johnson's family is here and is watching
15 this proceeding happening. It's horrible that the Garcia
16 family is here watching this proceeding happening.

17 But Mr. Johnson has to be held accountable. This
18 murder was not committed by a young black kid. It was
19 committed by John Johnson, your Honor.

20 And there's a reason why, in our society, and in the
21 federal system, someone who goes to trial on a murder case
22 faces life in prison. It's because it is, certainly federally,
23 really the greatest crime.

24 THE COURT: Well, look, that's all true. But a person
25 who stalks their victim and planned meticulously for months and

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1 then committed the murder in the cruelest possible way would be
2 looking at the same guidelines as Mr. Johnson, right?

3 MR. BLANCHE: Potentially, I -- yes. Certainly you
4 can't go to jail for longer than life.

5 THE COURT: Level 43, right. I mean 43 is 43. That's
6 what you get.

7 MR. BLANCHE: Correct. Although there's certainly
8 circumstances where it can be more than life. There's certain
9 gun charges that have to be consecutive. Your Honor's correct.
10 There's some counts that carry mandatory life, and that's not
11 this charge.

12 So I'm not saying that he's like every other murderer
13 who is convicted and sentenced. But you also can't sentence
14 somebody to more than life.

15 So in the government's view this is -- this is a very
16 sad case. It's a sad case because Mr. Johnson is a young man.
17 He was a young man when he committed this murder. And he's a
18 young man today.

19 On the other hand, in the government's view, there is
20 nothing before the Court, based upon his role in the offense,
21 that warrants a nonguideline sentence, your Honor.

22 THE COURT: Mr. Greenfield, anything you want to say
23 in response?

24 MR. GREENFIELD: Just one thing, Judge. I'm sort of
25 reminded of the conversation that takes place between

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1 Johnson -- between Reed and Richardson right after the shooting
2 takes place, where Reed says he doesn't want the kid to know
3 what happened. If there was an intentional murder that took
4 place and the young black kid did it, why would that be said?

5 THE COURT: Okay. Mr. Johnson, you have a right to
6 address the court, as I said. You don't have to, but you're
7 certainly welcome to. And if you'd like to speak, now is the
8 time.

9 THE DEFENDANT: No, sir.

10 THE COURT: All right. I'm going to take a couple of
11 minutes to think about what I've just heard. We'll resume in
12 about five minutes and then I'll impose the sentence. Just if
13 you want to use the restroom or get a drink you can, but in
14 five minutes we'll resume.

15 Thank you.

16 (Recess)

17 THE COURT: Let me state the sentence I intend to
18 impose and my reasons for it.

19 After that I'll ask the lawyers if there's any reason
20 under the law that I can't impose that sentence. And if there
21 is no legal impediment, then I'll formally impose the sentence
22 at that point.

23 Mr. Johnson and to everyone who is here, our system
24 requires judges to explain their sentence. And I think that's
25 a good thing. I think it's -- this is an important day for

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1 you, Mr. Johnson. It's an important day for your family. It's
2 an important day for Mr. Garcia's family. This is something
3 that weighs heavy on everybody. I'm very familiar and
4 sensitive to that. So I think it's very important for me to
5 explain what went into my thinking as to why the sentence I
6 impose is the appropriate sentence.

7 This is a difficult case. I agree with what
8 Ms. Garcia said, that two families have been very much
9 destroyed by this crime.

10 I look at the Garcia family and I think that young man
11 and all he might have been has been extinguished. We'll never
12 know. And not only will we not know, his family will not have
13 his presence ever again. They've been deprived of that.
14 That's the cruelest loss of all. And that requires punishment.

15 I look at the family members of Mr. Johnson. I think,
16 Well, this is a family that's suffering too. I think about
17 your child and others who are perhaps not here who are still
18 very much victims of this crime. They didn't do anything wrong
19 and yet they are going to be affected very much by this
20 sentence. And that's heartbreaking. That's not right. That's
21 not fair. But it is, sadly, the reality that comes with crimes
22 being committed by individuals. The impact of the sentence on
23 those individuals has great reach and it really makes a
24 difference in the lives of people who desperately need their
25 father or their brother or their loved one. That's -- I wish

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1 there was some way around that. But that is the reality. So
2 that -- I just say that because I think it's important for
3 everyone here, whether or not you have strong feelings about
4 what the appropriate sentence will be, to understand that this
5 is not something that's taken lightly. This is something that
6 I and I think every judge in my place takes very, very
7 seriously and weighs very, very carefully. The system is not
8 supposed to be vindictive. It's not supposed to be reflexive.
9 It's supposed to be deliberate and careful and thoughtful. And
10 I've certainly thought a lot about this case.

11 On the one hand I look at Mr. Johnson and I think that
12 he was 19 or so when he committed this crime. So he was quite,
13 quite young. That's different than Mr. Reed. That's different
14 than Mr. Richardson and Mr. Gonzalez. He was a very, very
15 young man at the time he committed this crime. And young men
16 do foolish and destructive things sometimes.

17 In addition his criminal history was, I think, very
18 distinguishable from that of Mr. Reed, whom I sentenced
19 yesterday. Mr. Reed had serious convictions for which he did
20 serious time. Crimes of violence. And repeatedly. He was,
21 just basically, every time he got out he committed more crimes.

22 Mr. Johnson committed some serious crimes, drug
23 crimes. No crimes of violence that I'm aware of. But the drug
24 crimes are serious and they do violence. Certainly selling
25 crack to someone is destructive. It's destructive of that

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1 individual's well-being and destructive of families and
2 communities. So I don't mean to understate the significance
3 and the moral culpability of selling drugs. And Mr. Johnson
4 did that on three occasions that he got convicted for. But the
5 sentences he received were relatively light: Two sentences of
6 30 days and one of approximately a year in which he got out
7 sooner.

8 The other thing that I think has to be noted is that
9 Mr. Johnson, after his release on the more serious drug crime,
10 and that was a crime committed when he was about 20, appears
11 that he's had no repeat connection to the criminal justice
12 system other than the criminal trespass that's set forth at
13 paragraph 42. The presentence report indicates he was working
14 up until the time that he was arrested for this crime in 2011.
15 That's not really corroborated. It's disappointing to me that
16 the probation department didn't get corroboration. But they do
17 seem to have very specific information about where he was
18 working and when. And certainly the absence of additional
19 convictions suggests that perhaps Mr. Johnson was starting to
20 get it and perhaps he was going to mature out of the lifestyle
21 that he put himself in as a young man.

22 So, those are the things that I think distinguish him
23 from Mr. Reed. Of course, the other factor that distinguishes
24 Mr. Johnson from Mr. Reed is that Mr. Johnson is the one -- the
25 jury found it and I'm prepared to find it -- is the one who

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1 pulled the trigger that killed Mr. Garcia. That makes him more
2 culpable than Mr. Reed in terms of the conduct on the day of
3 the murder and the robbery. And I think that can't be ignored
4 either.

5 I think about the sentencing I had yesterday, and most
6 of you weren't here for it, but Mr. Schneider, who is a very,
7 very capable lawyer representing Mr. Reed argued for hope and
8 the need for a person serving a lengthy jail sentence to have
9 some hope and that they will return to their loved ones before
10 they die. And I think as a general matter that's true. I
11 didn't find that to be a persuasive argument yesterday with
12 respect to Mr. Reed because of -- because of the extent, scope,
13 and severity of his criminal conduct, which suggested to me
14 that he really had forfeited any right to hope, at least to
15 hope for being released from jail before his natural life.

16 I don't think Mr. Johnson is in that same category. I
17 do think it's important that he have some hope and that he be
18 able to return to his family at some point before his life
19 expectancy is reached. But, there is no way I'm going to
20 sentence Mr. Johnson to 20 years or anything close to it. The
21 sentence I intend to impose is less than a life sentence but
22 it's a 40-year sentence, which means with good behavior
23 Mr. Johnson could be home in his late 50s or early 60s, and I
24 think that's still a life. That's still an opportunity that
25 Mr. Garcia will not have and that Mr. Garcia's family will feel

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1 the loss of for the rest of their lives.

2 I don't mean to suggest that that's a light sentence.
3 But it's less than what it could be. It's less than what
4 Mr. Reed received. And it's less than what the government and
5 perhaps others have asked for.

6 I think it's an appropriate sentence in light of all
7 those things I just talked about. But I don't for a moment
8 want anyone to think that I don't -- I don't recognize the loss
9 of the Garcia family. It is tragic and it's irreversible. And
10 it happened to Mr. Garcia and to his family.

11 So I intend to impose a 40-year sentence. It will be
12 20 years each on Counts One and Two and 40 years on Count
13 Three, to run concurrently.

14 I will impose a term of supervised release of three
15 years on Counts One and Two, and five years on Count Three, all
16 to run concurrently.

17 I will not impose a fine. I don't think there's
18 really any ability to pay a fine.

19 The government is not seeking forfeiture so I'm not
20 going to order forfeiture.

21 The government has not sought restitution, I don't
22 think, either.

23 So I will order, however, a \$300 special assessment.

24 There is standards and conditions associated with
25 supervised release. I will impose those. So if and when

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1 Mr. Johnson is released, he will have to abide by the
2 conditions that are set forth at pages 17 and 18 of the
3 presentence report. I'll announce them when I impose the
4 sentence formally. But that is what they are.

5 Okay. Is there any legal impediment to my imposing
6 that sentence, Mr. Blanche?

7 MR. BLANCHE: No, your Honor.

8 THE COURT: Mr. Greenfield?

9 MR. GREENFIELD: No, your Honor.

10 THE COURT: All right. Mr. Johnson would you please
11 stand.

12 Mr. Johnson, having received the jury's verdict of
13 guilty on all three counts of the indictment, I now sentence
14 you as follows.

15 I sentence you to a term of incarceration of 20 years
16 each on Counts One and Two, and 40 years on Count Three, each
17 to run concurrently. Those terms will be followed by a term of
18 supervised release of three years on Counts One and Two, five
19 years on Count Three, also to run concurrently. The supervised
20 release will include the following standard mandatory and
21 special conditions.

22 First you shall not commit another federal, state, or
23 local crime.

24 You shall not illegally possess a controlled substance
25 of any kind, that's marijuana, that's prescription drugs for

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1 which you don't have a prescription, that's any controlled
2 substance.

3 You shall not, of course, possess a firearm or a
4 destructive device of any kind.

5 You shall also cooperate in the collection of DNA as
6 directed by the probation officer.

7 There are 13 standard conditions of supervised release
8 that are imposed in virtually every case involving supervision.
9 I will impose those here.

10 I will also impose the following special conditions.

11 First, that you will participate in a program approved
12 by the probation office which will include testing to determine
13 whether you're using drugs or alcohol. That will be a
14 treatment program with testing. The court -- I authorize the
15 treatment provider to provide information and the results of
16 tests to probation. And I authorize probation to share
17 information with the treatment provider so that each can be
18 aware of how you are doing and whether or not you're complying
19 with the terms of your supervision, whether or not you're
20 complying with the terms of the program that you're associated
21 with.

22 You will be required to contribute to the costs of
23 that program to the extent you can afford to. So if you're
24 working and can help defray the costs, you should do that. If
25 you're not working but you have access to insurance, public or

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1 private insurance, to cover those costs, then you'll be
2 expected to cover those costs through the insurance that you
3 have. If you don't have any access to payment, then the Court
4 will bear those costs because it's important and required that
5 you get that treatment.

6 All right. You'll also be -- the probation report is
7 asking for alcohol aftercare treatment program which I think is
8 really what I'm authorizing here is drugs and alcohol. To the
9 extent that there are separate programs, then that's fine. But
10 the fact is you'll be tested. You'll get tested to see whether
11 you're using drugs and alcohol.

12 You will provide the probation officer with any
13 requested financial information.

14 You will also submit your residence, your place of
15 business, your vehicle, or any other premises that you control
16 to a search in the event that the probation officer thinks that
17 there might be evidence of a crime or evidence of a violation
18 of your supervised release within those premises. So you have
19 to agree that you will be subject to a search when probation
20 thinks a search is appropriate. The search would have to be
21 done in a reasonable manner and at a reasonable time. But if
22 you declined to allow that search, then that would be a
23 violation of your supervised release and you would be
24 resentenced. So you have to allow that.

25 Another thing you have to do is you have to notify the

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1 people with whom you share premises. If you're living with a
2 relative or a friend, you have to tell them that you are
3 subject to the search requirement so that they understand that
4 if they commingle their things with yours, then their things
5 could be searched too. By giving them that notice, you'll give
6 them the opportunity to protect their own privacy rights. All
7 right. So you have to let them know that.

8 I am going to direct that you report to the nearest
9 probation office within 24 hours of your release from custody.
10 However, if it's a weekend, then the next business day. Okay.
11 But you should -- so when you get out, you should come home.
12 Have a nice meal with your family. But then the next day I
13 want you to go to the probation office will be in this
14 courthouse. And then immediately begin reporting and abiding
15 by the conditions of your supervised release.

16 As I said, I'm not going to impose a fine.

17 I am going to impose a three hundred dollar special
18 assessment, one hundred dollars for each count of conviction.

19 Are there any recommendations you'd like me to make,
20 Mr. Greenfield?

21 MR. GREENFIELD: Yes, your Honor.

22 He asked that he be incarcerated within the --
23 somewhere within the northeast region of the United States.
24 Bureau of Prisons of Northeast Region.

25 THE COURT: All right. So I'll recommend that. I

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1 can't order that. But I'll recommend that it be somewhere in
2 the northeast so your family is able to visit you more easily.
3 So I will make that recommendation. Okay.

4 All right. There are no open counts, Mr. Blanche?

5 MR. BLANCHE: No, your Honor.

6 THE COURT: Okay. Mr. Johnson I should tell you, you
7 have a right to appeal this sentence. I think you're already
8 contemplating an appeal. I've appointed Mr. Neuman to assist
9 with that appeal. But you need to file a notice of appeal
10 within two weeks. Probably two weeks from tomorrow when I
11 issue the judgment.

12 So talk to your lawyers about filing that notice. I
13 think they're on it. But that's something that I think you'll
14 have to do.

15 Have a seat.

16 Let me say this to Mr. Johnson's family. That's a
17 long sentence. I'm not oblivious to that. That's a hard
18 sentence on you too. I'd ask you to continue to support him.
19 He's going to need your support more than ever. So write to
20 him. Visit him. Be a part of his life.

21 And Mr. Johnson, I will urge you to remember that the
22 fact that you are incarcerated for a lengthy term doesn't mean
23 that you can't maintain relationships with people, with your
24 family members, those who are here today and others who really
25 are depending on you, including your child.

D1G9JOHS

1 So take that seriously. Do everything in your power
2 to make sure that you can be a father and you can be a friend
3 and relative to people who count on you. I think it's in your
4 interests to do that as well.

5 And I want you also to reflect on what happened here
6 and the loss that the Garcia family is experiencing everyday.

7 And to, finally, the Garcia family, I don't know
8 whether you came here with a sense as to what you thought would
9 be an appropriate sentence. It may have been the case that you
10 thought anything less than a life sentence would somehow
11 disrespect you and your son. I hope you don't feel that.

12 The sentence I imposed is what I think is the
13 appropriate one in light of all the factors. I've explained
14 it. I don't expect everyone to agree with me. But I hope that
15 everyone at least -- at least everyone recognizes that it was a
16 process that was deliberate and careful and thoughtful and I
17 did the best I could to hand out a just sentence.

18 I wish you the best. It's going to be difficult
19 always for you. And I hope that you'll find it in your heart
20 to forgive those responsible because I think ultimately that's
21 probably the best for you as well.

22 But I hope that -- look, we have two families here
23 today. I hope you'll be respectful of each other's pain and
24 what you're going through, and I hope that on the way out
25 you'll be mindful of that.

D1G9JOHS

1 So let me thank the marshals. Let me thank the court
2 reporter. And let me thank the attorneys for their efforts in
3 this case.

4 Okay. Good luck to your, Mr. Johnson.

5 Thanks.

6 (Adjourned)